

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

CORONA COAL COMPANY, APPELLANT,

v.

THE UNITED STATES.

} No. 380.

APPEAL FROM THE COURT OF CLAIMS.

MOTION TO DISMISS.

Comes now the Solicitor General of the United States and moves the court to dismiss this appeal upon the ground that it is taken and prosecuted contrary to the provisions of Section 154 of the Judicial Code, which provides as follows:

No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States.

The appeal is from a judgment of the Court of Claims dismissing the petition of the plaintiff for

want of jurisdiction. The judgment of the Court of Claims was entered on the 13th day of February, 1922. The appeal therefrom was allowed on April 10, 1922. Meanwhile, and on or about the 27th day of February, 1922, the plaintiff began three actions in the District Court of the United States for the Eastern District of Louisiana against James C. Davis, as Agent for the President of the United States of America under the Transportation Act of 1920, which actions are now pending and undetermined and the causes of action therein set forth are the same causes of action set forth in the petition herein, as will appear from certified copies of the petitions in said actions filed with the clerk of this court.

The cause of action in the Court of Claims is summarized, in the opinion of that court (p. 22), as follows:

The petition alleges in substance that the plaintiff's chief business is the mining and sale of coal; that it had entered into contract with certain railroads to supply them with coal for a certain period; that subsequent to the date of these contracts the railroads were taken over by the Government; that the Railroad Administration insisted that it was entitled to have the coal provided for in these contracts delivered at the same price which the plaintiff had agreed upon with the railroads; that the plaintiff refused to deliver the coal at that price; and that therefore the United States Fuel Administration requisitioned 171,476.61 tons of coal, which under said requisition were de-

livered to the United States Railroad Administration, and that the plaintiff was paid the price by the Government which had been agreed upon by it and the railroads before they were taken over, the sum paid to the plaintiff being \$383,593.76, while the price fixed by the Fuel Administration for said coal was \$486,997.79, and the plaintiff sues for the difference in price, which is stated in the petition as the sum of \$107,431.99.

Section 206 (a) of the Transportation Act, 41 Stat. 461, provides as follows:

Actions at law, suits in equity, and proceedings in admiralty, based on causes of action arising out of the possession, use, or operation by the President of the railroad or system of transportation of any carrier (under the provisions of the Federal Control Act, or of the Act of August 29, 1916) of such character as prior to Federal control could have been brought against such carrier, may, after the termination of Federal control, be brought against an agent designated by the President for such purpose, which agent shall be designated by the President within thirty days after the passage of this Act. Such actions, suits, or proceedings may, within the periods of limitation now prescribed by State or Federal statutes but not later than two years from the date of the passage of this Act, be brought in any court which but for Federal control would have had jurisdiction of the cause of action had it arisen against such carrier.

Pursuant to this Act the President duly designated the said James C. Davis as his Agent, and said actions pending in the District Court are brought to enforce against the President, through his said agent, the same causes of action as are set forth in the petition herein in the Court of Claims, and said causes of action arose while the President was in respect thereto acting under the authority of the United States.

Wherefore it is respectfully submitted that this appeal should be dismissed.

JAMES M. BECK,
Solicitor General.

APRIL, 1923.

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Supreme Court of the United States

OCTOBER TERM, 1923.

No. 42.

CINCINNATI COAL COMPANY, Appellant,

THE UNITED STATES

Respondent from Court of Claims.

**ANSWER TO MOTION TO DISMISS AND RULE
TO SHOW CAUSE**

FORNEY JOHNSTON,

Attorney for Appellant.

November, 1923.

In the
Supreme Court of the United States

OCTOBER TERM, 1923.

No. 42.

CORONA COAL COMPANY, *Appellant*,

v.

THE UNITED STATES

Appeal from Court of Claims.

ANSWER TO MOTION TO DISMISS AND RULE
TO SHOW CAUSE

Comes now Corona Coal Company, Appellant in the above-styled proceeding, and for answer to the rule ordered herein on October 8th, that cause be shown by Appellant why this appeal should not be dismissed and to the motion to dismiss filed herein on behalf of the United States, says:

1. The actions instituted by Plaintiff in the District Court of the United States against James C. Davis, as agent for the President of the United States (as nominal defendant) under Section 206(a), Transportation Act, 1920, is not such suit or process as is contemplated by Section 154 of the Judicial Code.

2. The actions pending in the District Court of the United States against James C. Davis, as Agent for the President under the Transportation Act, 1920, are not pending against

“any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States.”

At the time when the cause of action alleged in the actions in the District Court arise, James C. Davis was not an agent of the President or acting or professing to act in respect to the matters alleged in the suit, nor acting or professing to act mediately or immediately under the authority of the United States.

The cause of action set out in said suits arose during Federal control of railroads, as appears from the face of the complaint. James C. Davis was appointed Director General and agent of the President under Section 206(a) by Executive order dated March 26, 1921.

3. The action in the Court of Claims in which this appeal was taken is based upon a contract express or implied under averments which, appellant conceives, confer jurisdiction upon the Court of Claims. By demurrer and argument in said action in the Court of Claims, counsel for the

United States took the position that the cause of action thus asserted in the Court of Claims should properly be brought in the District Courts, *against James C. Davis as Agent of the President of the United States*, under Section 206(a) of the Transportation Act (41 Stat. L. 461).

The Court of Claims held that the cause of action presented by the petition filed in that Court was proper to be brought only in the District Courts *against the United States*, under Section 10 of the Lever Act (40 Stat. L. 276, 779).

The Statute of Limitations fixed by Section 206(a) of the Transportation Act (which counsel for the United States contended in this proceeding is the statute controlling the action) is two years from the date of approval of the Transportation Act—February 28, 1920.

In view of this diversity of the opinion as to the proper forum and in order to avoid the bar of the statute of limitations should the position of the United States be sustained, it was necessary that Appellant should file suit in the District Courts against the United States (bringing the suit against James C. Davis as agent of the President as the nominal defendant by virtue of the requirements of the Statute), and such actions were accordingly filed within the two-year period fixed by the Act.

4. Appellant respectfully avers that the institu-

tion of these actions against the United States in the District Court by suit against the agent of the President in order to avoid the bar of the statute of limitations is not within the meaning of Section 154 of the Judicial Code.

Appellant avers that Section 154 is intended to prevent contemporaneous actions against the United States and against a person (other than the United States) for the same cause of action under such circumstance as that a judgment against the person other than the United States might by the latter be made the basis of a claim for reimbursement against the United States. The statute plainly does not contemplate cases where both suits are in substance and effect against the United States. Here, both actions are against the United States.

5. The action against James C. Davis, as Agent of the President, in the District Courts does not purport to be against

“any person who at the time when the cause of action alleged in such suit or process arose was in respect thereto acting or professing to act mediately or immediately under the authority of the United States.”

It is, in fact, an action against the United States. James C. Davis is a mere nominal defendant designated under the requirements of Sec-

tion 206(a) for convenience in the liquidation by the President of the obligations of the United States arising out of Federal control.

At the time when the cause of action arose which is sued on in the Court of Claims against the United States and in the District Court against James C. Davis (a nominal agent), as statutory defendant in said District Court actions, the said Davis was not "in respect thereto, acting or professing to act, mediately or immediately under the authority of the United States." He had nothing to do with the matter, not having been appointed as agent of the President until the Executive order issued March 26, 1921.

WHEREFORE, it is respectfully submitted that the rule to show cause should be discharged and the motion to dismiss should be dismissed.

FORNEY JOHNSTON,

Attorney for Corona Coal Co.

November 5, 1923.

